

## REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed May 17, 2002 (Paper No. 3). Reconsideration and allowance of the application and presently pending claims 1-13, as amended, are respectfully requested.

### 1. Present Status of Patent Application

Upon entry of the foregoing amendments, claims 1-13 remain pending in the present application. Claims 1, 4, 8 and 11 have been amended. The foregoing amendments add no new matter to the present application.

### 2. Response to Rejection of Claims 1-13 under 35 U.S.C. § 103(a)

The Office Action rejected claims 1-13 under §103(a) as allegedly being unpatentable over Schulman (U.S. Pat. No. 5,600,632) in view of Ennis, Jr. *et al.* (U.S. Pat. No. 5,867,483), hereafter "*Ennis*."

The U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. See *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1598 (Fed.Cir. 1988). Accordingly, to make a *prima facie* case for obviousness, there must be some prior-art teaching or established knowledge that would suggest to a person having ordinary skill in the pertinent art to fill the voids apparent in the applied reference.

The rejection alleges the following:

Regarding to claims 1, 4, 8, and 11, Schulman discloses a system (Fig. 3) for displaying network performance parameters, comprising means for collecting network latency, data delivery success and frame size distribution information (col. 7 lines 39-55, the network analyzers read on the collecting means, extract the desired information such as latency, packet size distribution, packet loss from the network), and display means for displaying said network latency, data delivery success and frame size distribution information (col. 6 lines 24-28, the monitors read on the display means to provide the detailed view of the network parameters).

Schulman fails to teach a mean for collecting bit burst analysis.

However, Ennis teaches for a probe with a microprocessor to measures the utilization of the network bandwidth at different time interval, means of collecting bit burst analysis (Fig. 11 col. 10 lines 16-31 and Appendix A).

Thus, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to includes the bit burst analysis as taught by Ennis in Schulman's system with the motivation to optimize the network performance parameter (Fig. 8-10).

Regarding to claims 2, 5, and 6, Schulman discloses the display means further comprises a graphical user interface with plurality views of the network performance parameter (Fig. 8-10)

Regarding to claims 3, 7, 9, and 12, Schulman discloses the network performance parameter views are collected from said at least two communication devices by said network management system (Fig. 11 col. 8 lines 23-34).

Regarding to claims 10 and 13, Schulman discloses of allowing an administrator of a network the ability to determine, from said plurality of network performance parameter views, the performance of said communication network (col. 8 lines 35-47).

Applicants respectfully traverse this rejection.

a. Claims 1, 4, 8, and 11

Applicants have amended independent claim 1 to include the feature of "collecting, from a plurality of communication devices." Further, Applicants have amended independent claims 1, 4, 8, and 11 to include the feature of "said communication devices configured to support user devices" to define further the present

invention. Applicants respectfully submit that these features are neither disclosed, taught nor suggested by the proposed combination.

Specifically, Applicants have amended independent claims 1, 4, 8, and 11 to distinguish an aspect of the invention in which communication devices support user devices. *See* Application, page 11, lines 11-13. The present application discloses a system that collects and presents to a network administrator of a communications network, various performance parameters of the network from communication endpoints. *See* Application, page 13, lines 16-19. Thus, the system disclosed in the present application enables the network administrator to determine whether the communications network is delivering a contracted level of service to an end user. *See* Application, page 17, lines 15-20.

*Schulman* in view of *Ennis*, however, seemingly lacks any teaching, suggestion or motivation to combine or incorporate the use of a communication device placed at a communication endpoint, wherein the communication device is configured to support user devices. *See Ennis*, Fig. 3. For example, *Schulman* specifically appears to disclose the use of multiple synchronized network analyzers at a plurality of points within a network. Additionally, these network analyzers apparently are not capable of supporting user devices. Correspondingly, *Ennis* also fails to disclose, teach or suggest the combination or incorporation of a means for collecting network performance data from a plurality of communication devices which are capable of supporting user devices. *See Ennis*, Fig. 1.

Moreover, *Schulman* in view of *Ennis* does not appear to disclose, teach or suggest a system or method featuring the display of network performance information, such as bit burst analysis, network latency, data delivery success, and frame size distribution, as recited in claims 1, 4, 8, and 11. Specifically, Applicants respectfully

disagree with the statement in the Office Action that “the monitors [in *Schulman*] read on the display means to provide the detailed view of the network parameters.” See *Schulman*, col. 6, lines 24-28. For example, *Schulman* clearly discloses that data from individual monitors or network analyzers are combined with data captured from other monitors before the data can be analyzed. See *Schulman*, col. 6, lines 38-41. Therefore, *Schulman* in view of *Ennis* fails to disclose, teach, or suggest at least the feature of displaying network performance information, as recited in claims 1, 4, 8, and 11.

Applicants respectfully submit that the Office Action also fails to articulate a clear motivation to make the proposed combination. Well established Federal Circuit case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). Applicants respectfully submit that the Office Action does not demonstrate the teaching required by the above-cited legal precedent.

In the recently decided case of *In re Sang-Su Lee*, 277 F.3d 1338, 61 USPQ 2d 1430 (Fed Cir. 2002), the United States Court of Appeals for the Federal Circuit, reviewing an obviousness rejection by a Patent Examiner that was upheld by the Board of Patent Appeals and Interferences, stated:

[t]he “common knowledge and common sense” on which the Board relied in rejecting Lee's application are not the specialized knowledge and expertise contemplated by the Administrative Procedure Act. Conclusory statements such as those here provided do not fulfill the agency's obligation....

....

...The patent examiner and the Board are deemed to have experience in the field of the invention; however, this experience, insofar as applied to the determination of patentability, must be applied from the viewpoint of "the person having ordinary skill in the art to which said subject matter pertains," the words of section 103.

In finding the relevant facts, in assessing the significance of the prior art, and in making the ultimate determination of the issue of obviousness, the examiner and the Board are presumed to act from this viewpoint. Thus, when they rely on what they assert to be general knowledge to negate patentability, that knowledge must be articulated and placed on the record. The failure to do so is not consistent with either effective administrative procedure or effective judicial review. The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.

*In Re Sang-Su Lee*, 277 F.3d 1338 at 1345.

Applicants respectfully submit that there is nothing in *Schulman* and *Ennis* that would motivate one having ordinary skill in the art to combine these references. The Office Action merely states that it would be obvious to combine the bit burst analysis as taught by *Ennis* with the system for synchronized network analyzers taught by *Schulman* with the motivation to optimize network performance. On this basis alone, the Office Action concluded that the combination of these elements with the teachings of *Schulman* and *Ennis* would have been obvious. However, there is no teaching in *Schulman* that its network analyzer has the capabilities to perform bit burst analysis.

Accordingly, the required teaching in the relevant art to suggest supporting the combination of the prior art references is lacking. See *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984).

Hence, claims 1, 4, 8, and 11 are not obvious under the proposed combination of *Schulman* in view of *Ennis*, and the rejections should be withdrawn.

b. Claims 2-3, 5-7, 9-10, and 12-13

Applicants respectfully submit that since claims 2-3, 5-7, 9-10, and 12-13 include all the features of their respective independent claims 1, 4, 8, and 11; and since independent claims 1, 4, 8, and 11 are allowable, as argued above, pending claims 2-3, 5-7, 9-10, and 12-13 are allowable a matter of law for at least this reason. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

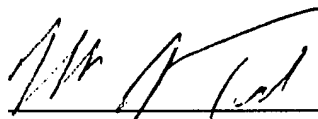
Furthermore, and as an independent basis for patentability over the §103(a) rejection, Applicants respectfully submit that claims 2-3, 5-7, 9-10, and 12-13 have independent bases for allowability. Specifically, *Schulman* fails to disclose a graphical user interface as recited in claims 2, 5, and 6, since *Schulman* appears to only demonstrate “the kind of data which can be extracted from the sorted network analyzer data” but does not disclose the referenced extraction process or system. *See Schulman*, Figs 8-10b and col. 8, lines 1-3.

Further, the proposed combination of *Schulman* and *Ennis* fails to disclose a communication device as recited in claims 3, 7, 9, and 12, since the network analyzer/probe of the prior art does not appear to be capable of supporting user devices. Also, *Schulman* in view of *Ennis* fails to disclose the ability of an administrator to determine the performance of a communication network, as recited in claim 10, since *Schulman* seemingly does not disclose the feature of displaying network performance information.

### CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-13 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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**APPENDIX**  
**CLAIM-AMENDMENTS**

Pursuant to 37 C.F.R. §1.121(c)(1)(ii), the following amended claims are included below. Changes are indicated by deleting that language which is enclosed within brackets (“[ ]”) and by inserting that language which is underlined (“      ”).

1. (Amended) A system for displaying network performance parameters, comprising:

means for collecting, from a plurality of communication devices, said communication devices configured to support user devices, bit burst analysis, network latency, data delivery success and frame size distribution information; and

display means for displaying said bit burst analysis, network latency, data delivery success and frame size distribution.

4. (Amended) In a communication environment having at least two communication[s] devices, said communication devices configured to support user devices, and a network management system, a system for displaying network performance information, comprising:

a plurality of network performance parameter views; and

display means for presenting to a user said plurality of network performance parameter views.



8. (Amended) A method for displaying network performance parameters in a network comprising a network management system and at least two communication devices, said communication devices configured to support user devices, the method comprising the steps of:

collecting a plurality of network performance parameter views including a bit burst analysis performance parameter view, a network latency performance parameter view, a data delivery success performance parameter view, and a frame size distribution performance parameter view; and

displaying said bit burst analysis, said network latency, said data delivery success, and said frame size distribution performance parameter views.

11. (Amended) A computer readable medium having a program for displaying network performance parameters in a network comprising a network management system and at least two communication devices, said communication devices configured to support user devices, the program comprising the logic configured to perform the steps of:

collecting a plurality of network performance parameter views including a bit burst analysis performance parameter view, a network latency performance parameter view, a data delivery success performance parameter view, and a frame size distribution performance parameter view; and

displaying said bit burst analysis, said network latency, said data delivery success, and said frame size distribution performance parameter views.